IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9268 OF 2004

Dilip Yashwant Atigre Petitioner

versus

State of Maharashtra & others Respondents

P.S.Dani for A.G.Damle, adv. for petitioner.

R.M.Patne, AGP for R.1 to 4.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 22nd December 2004

PC :

1. By this petition under Article 226 of Constitution of India the petitioner challenges the order dated 22nd September 2003 passed by respondent no.2 (Exhibit-B) and notice dated 8th November 2004 issued by respondent no.4 (Exhibit-C). It is the case of the petitioner that along with original respondents 5 to 8 who are now transposed as petitioners 2 to 5, he owns land survey nos.514 and 515 of village Kagal, District Kolhapur. Respondents 1 to 4 have initiated proceedings for acquisition of these lands. The said lands are being acquired for the

purpose of resettlement of Dudh Ganga Project affected persons. It is contended that petitioners 2 to 5 challenged the said acquisition by instituting Writ Petition No.3998 of 1986 in this Court. This petition came to be dismissed by this Court.

2. Against the order of dismissal, Special Leave Petition came to be filed by petitioners 2 to 5 which was disposed of by order dated 1st December 1998 by Supreme Court. The operative part of the order of Hon'ble Supreme Court reads thus :-

"... ... Accordingly, we set aside the impugned order passed by the High Court in each appeal and remand the matter to the Commissioner, Pune Division, Pune. He shall decide all these matters afresh in the light of the aforesaid observations. We further direct that the parties will maintain status quo with regard to possession of the lands till disposal of the matters by the Commissioner, the order of status quo will continue for a period of four weeks from the date of service of the orders passed by the Commissioner on the respective land owners. We make it clear that the Commissioner shall decide the matters afresh on merits, uninfluenced by the observations made by the High Court, in accordance with law and as per the various Circulars referred to above.

. Appeals are accordingly disposed of in terms of this order, with no order as to costs.

3. In pursuance of the order and direction of Hon'ble Supreme Court the Commissioner, Pune

Division took up the matter. However, it is contended that the advocate appearing for petitioners 2 to 5 failed to appear at the hearing scheduled on 11th August 2003 before Commissioner. Petitioner no.1 was not a party to the proceedings before the Commissioner. The Commissioner passed an order on 22nd September 2003 dismissing the application/representation made by petitioners 2 to 5 on merits. It is contended that petitioners and more particularly petitioner no.1 was unaware of the order passed by the Commissioner.

4. A serious grievance is made that in pursuance of the order of Commissioner, a notice came to be issued by Special Land Acquisition Officer No.12, Kolhapur on 8th November 2004 directing the petitioners to remain present at site to enable the Executing Officer, Special Land Acquisition, to take physical possession of the lands on 22nd November 2004. This is a notice u/s 16 of the Land Acquisition Act, 1894. Aggrieved by the order of Commissioner and the notice in pursuance thereof that the present petition has ben instituted.

5. We have heard Mr.Dani, learned counsel

appearing for petitioner and Mr.R.M.Patne, AGP for respondents 1 to 4. By our order dated 24th November 2004 we had permitted the petitioner to transpose original respondents 5 to 8 as petitioners. Amendment was to be carried out to that effect and which has been carried out. We had directed the State Government to file reply within two weeks and posted the matter on 13th December 2004. We passed an order on 24th November 2004 directing the State Government not to distribute the lands in question to the affected persons till further directions from this Court.

6. When this matter was placed before us on 27th December 2004, it was brought to our notice that no affidavit in reply has been filed by the State Government. We had also directed the concerned officer to remain present.

7. Since no affidavit has been filed nor is any material produced by respondents 1 to 4 to support their actions, we have to proceed on the basis that the averments in the petition remain uncontroverted. We are informed that no orders distributing lands in question to the affected persons have been issued by respondents 1 to 4.

Similarly, we are informed that the impugned notice has not been acted upon. We are, therefore, of the opinion that interest of justice will be subserved if we direct restoration of possession of lands in question to the petitioners on their filing an undertaking in this Court to the following effect:-

a) that they will not dispose off or alienate the lands in any manner whatsoever;

b) that they will not part with possession of the lands and would hand over vacant and peaceful possession thereof subject to right of challenging the actions/orders;

c) the undertaking will also incorporate a statement that if no steps are taken by the petitioners to challenge the decision of the authorities, if adverse to them, within a period of two weeks from the date of receipt of communication to that effect, then the authorities are free to take possession of the lands in question;

d) Such undertaking should be filed within a period of four weeks from today. On such

undertaking being filed, the order passed by Commissioner on 22nd September 2003 and the notice issued in pursuance thereof shall stand quashed and set aside. Thereupon, Commissioner - Pune Division shall pass a fresh order after hearing petitioners or their representatives within a period of three months from the date of receipt of a copy of undertaking filed by the petitioners in this Court.

8. All pleas and contentions are left open. Petition disposed of. No costs. All concerned to act on an authenticated copy of this order.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)